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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 793

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner,*

vs.

WARNER HOLDING COMPANY, A CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed January 30, 1946.
Certiorari granted March 11, 1946.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

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vs.

WARNER HOLDING COMPANY, A CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed January 30, 1946.
Certiorari granted March 18, 1946.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 25-36)[1] is reported in 60 Fed. Supp. 513. The opinion of the Circuit Court of Appeals (R. 66-71) is reported in 151 Fed. (2d) 529.

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[1]Page references are to the printed transcript of record. Emphasis is supplied unless otherwise indicated.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 71-72). The petition for writ of certiorari was filed in this Court January 30, 1946. Certiorari was granted March 11, 1946. The jurisdiction of this Court is purportedly invoked by petitioner under Sec. 240 (a) of the Judicial Code as amended by the act of February 13, 1925.

QUESTION PRESENTED

The only question presented by this appeal is whether or not the Court has the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator as part of an injunction to restrain further violations of the Emergency Price Control Act of 1942 under Sec. 205 (a) thereof (R. 25, 31).

Petitioner concedes that if the Court has such power it is only by virtue of the words "or other order" contained in Sec. 205 (a) of said act (R. 26, 27).

STATUTE INVOLVED

The relevant provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944, are set forth in the appendix, infra, pages 39, 40, 41.

STATEMENT

Petitioner's statement of the case is fairly presented, except that respondent believes that the following should be added thereto. The District Court further found, as follows:

> "There is some evidence in this case that in a treble damage action defendant may have valid counter-claims against certain tenants for damage

to or theft of its property. The tenants are not parties to this proceeding. One might well pose the question: 'Could this court, without a jury, adjudicate the amount of restitution in each of the 20 rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendant having an opportunity to interpose valid counter-claims as a defense?' "

The foregoing is then immediately followed by the following quotation from the record (R. 27):

> "My conclusion is that this court lacks the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator. I therefore do not raise the question of the propriety of such an order *under the facts of this case.*"

There is, therefore, on this appeal no question of the Court's discretion, because the parties involved in such an order were not all parties litigant and under the jurisdiction of the Court. The Circuit Court of Appeals (R. 52-53) rested its decision on two essential grounds: First, that Sec. 205 (e) of the act provided adequate civil remedies to effectuate the purposes of the act; and, secondly, that Sec. 205 (a) provides a specific and exclusive statutory remedy for enforcing compliance with the act.

SUMMARY OF ARGUMENT

THE POWER GRANTED TO THE COURT BY CONGRESS UNDER SEC. 205 (a) OF THE EMERGENCY PRICE CONTROL ACT TO ISSUE AN INJUNCTION "OR OTHER ORDER" DOES NOT INCLUDE THE POWER TO ORDER RESTITUTION.

A. The plenary power of the Court to grant mandatory relief must be predicated upon language specific and direct.

B. Where a statute creates a right and prescribes a remedy, the statutory remedy is exclusive.

C. The legislative history of the act clearly discloses no intent on the part of Congress to make reparation or restitution orders available to the Administrator.

D. The legislative history of the act by the amendment to Sec. 205 (e) so as to enlarge the right of the Administrator to secure reparations clearly indicates that there was no intention to grant the power to seek and award reparations or restitutions under Sec. 205 (a).

1. The exercise of such a power would lead to absurd, illogical and unconscionable complications and situations not contemplated by the Congress, and obviously unjust, inequitable and not within the purview of the act.

E. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done either:

1. because the relief and power so granted is granted specifically and directly to the administrative body; or

2. because the violation itself requires mandatory relief; or

3. by consent decree.

F. The restoration of status quo must be predicated upon jurisdiction of the subject-matter and of the parties.

ARGUMENT

THE POWER GRANTED TO THE COURT BY CONGRESS UNDER SEC. 205 (a) OF THE EMERGENCY PRICE CONTROL ACT TO ISSUE AN INJUNCTION "OR OTHER ORDER" DOES NOT INCLUDE THE POWER TO ORDER RESTITUTION.

A. The plenary power of the Court to grant mandatory relief must be predicated upon language specific and direct.

If petitioner's interpretation of the words "or other Order" is correct, it can follow only by way of implication, rendering thereby the words "or other Order" susceptible of interpretation not included in the words themselves, not explicit and direct and subject to more than one interpretation. The resulting ambiguity defeats the power of the Court to grant mandatory relief predicated upon them.

The meaning of this language was considered in the case of *Hecht Company v. Bowles*, 321 U. S. 321. This Court in rendering its decision (and this appears to be the only case that has to date been considered by the Supreme Court wherein these words are interpreted) said:

> "Though the Administrator asks for an injunction some 'other Order' might be more appropriate, or at least so appear to the Court. Thus, in the present case, one Judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an Order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an Order, moreover, would seem to be a type of 'other Order' which

a faithful reading of Sec. 205 (a) would permit a court to issue in a compliance proceeding."

To grant the relief requested, this Court would have to reverse itself.

The Supreme Court stated in *Meredith v. City of Winterhaven,* 320 U. S. 228, 235, 64 Sup. Ct. 7, 11, and cited and quoted from in the *Hecht* case, supra, as follows:

> "An appeal to the equity jurisdiction conferred on Federal District Courts is an appeal to the sound discretion which guides the determinations of courts of equity. * * * the qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. * * * The Administrator does not carry the sole burden of the war against inflation. The courts also have been entrusted with a share of the responsibility. And their discretion under Sec. 205 (a) must be exercised in the light of the large objectives of the Act. *For the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases.*

When Congress enacted the statute in question it must have had in mind the fundamental rule that where the enumeration of the specific is followed by a general statement, it limits the field of application of the general to the field covered by the specific. The Court cannot enlarge upon the statutory scheme of enforcement where special and exclusive remedies are provided by the statute.

Globe Newspaper Company v. Walker, 210 U. S. 356.

Hecht Company v. Bowles, supra.

Meredith v. City of Winterhaven, supra.

Decorative Stone Company v. Building Trades Council, 23 Fed. (2d) 426.

B. Where a statute creates a right and prescribes a remedy, the statutory remedy is exclusive.

The general rule in this regard is stated in 50 Am. Jur., Statutes, Sec. 596, pp. 593-594, as follows:

> "It is an established principle, that if a statute creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy thus prescribed is exclusive. In such case, such remedy must be pursued in the enforcement of the right to the exclusion of any other remedy."

Decorative Stone Company v. Building Trades Council, 23 Fed. (2d) 426 (2nd Circuit, 1928). Pursuant to Sec. 16 of the Clayton Act (38 Stat. 730, 737, 15 U. S. C. A., Sec. 26) appellant sued for injunctive relief and for treble damages. After trial the district judge granted the injunctive relief, but refused to hear appellant "for the assessment of actual damages as an ordinary incident to an equity case." Appellant offered in that event, to waive its claim for treble damages. This request was denied, as was also a request that a jury be impaneled to assess damages, and that damages so found be trebled. The appellant appealed from said decree in so far only as it denied the recovery of damages and a reasonable attorney's fee, as incident to the injunctive relief granted. The Court said:

> "The appellant's contentions are based upon the premise that a court of equity, having jurisdiction for the purpose of awarding an injunction, should retain the cause and afford complete relief in accordance with established equitable principles * * *."

Arguing only as to special damages—not treble, in order to bring this case directly within the case at bar, the Court said:

"But it is an equally well recognized principle that where, as here, a statute creates a right and prescribes a remedy, the statutory remedy is exclusive. *Globe Newspaper Co. v. Walker*, 210 U. S. 356, 28 S. Ct. 726, 52 L. Ed. 1096; *Pollard v. Bailey*, 20 Wall. 520, 527, 22 L. Ed. 376; *Yates v. Jones Nat. Bk.*, 206 U. S. 158, 179, 27 S. Ct. 638, 51 L. Ed. 1002. The citation of *Pollard v. Bailey* in the Fleitmann case (*Fleitmann v. Welsbach Co.*, 240 U. S. 27, 36 S. Ct. 233, 60 L. Ed. 505) indicates that this doctrine was then thought to be applicable to Section 7 of the Sherman Act. In *Paine Lumber Co. v. Neal*, supra (244 U. S. 459, 37 S. Ct. 718, 61 L. Ed. 1256) it was held that Section 4 of the Sherman Act (15 U. S. C. A., Sec. 4), in providing for an injunction at the suit of government officials, impliedly negatived the right of a private person to obtain injunctive relief. By parity of reasoning, we think the remedy which the Act gave for damages was also exclusive. See *Wilder Mfg. Co. v. Corn Products Co.*, 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520, Ann. Cas. 1916 A. 115. We are of opinion, therefore, that the complainant's only right to damages was the statutory right, and that, for reasons already given, this right is not enforceable in the District Court as an incident to injunctive relief."

Wilder Mfg. Co. v. Corn Products Co., supra, at p. 174:

"Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes. *Farmers & Mechanics Nat. Bk. v. Dearing*, 91 U. S. 29, 35; *Barnet v. Nat. Bk.*, 98 U. S. 555; *Oates v. Nat. Bk.*, 100 U. S. 239; *Stephens v. Monongahela Bk.*, 111 U. S. 197; *Tesin Coal Co. v. George*, 233 U. S. 354, 359."

Paine Lumber Co., et al., v. Neal, et al., supra. Opinion by Mr. Justice Holmes, at page 471, states that "the Act of October 15, 1941, C. 323, Sec. 16; 38 Stat. 730, 737 (the Clayton Act) establishes the right of private parties to

an injunction in proper cases" (the contrary was held in this case, for other reasons). Even the dissent held that the remedy prayed for must be confined to the relief granted by the act. The dissent, in arguing that the injunction asked for should be granted, predicated its argument upon the ground that the relief should not be limited to the government because the individual always had the right of action at common law and said:

> "The Act creates no new offense and gives no new cause of action."

In other words, had a new offense and or cause of action been given, the relief would be limited to that.

Globe Newspaper Co. v. Walker, 210 U. S. 356. This was an action for claimed violation of the copyright laws. The question was whether plaintiff below had a remedy for damages as well as for an injunction under the Copyright Act. The Court said:

> "As we shall have occasion to see, the American Copyright Act does give special remedies to the owner of a copyright of maps. *Inadequate it may be to fully* protect the property in the copyright, yet such as Congress has seen fit to give, and which it, *not the courts*, have power to enlarge by annulment of the statutes.
>
> "To the owner of a copyright on a map is given, under Sec. 4965, forfeiture of plates and sheets, and one-half of the penalty of $1 for every sheet found in the defendant's possession; under Sec. 4970, the right to proceed by injunction. It thus appears that Congress has prescribed the remedies it intends to give, this being true, 'however inadequate,' as Lord Kenyon said in *Beckford v. Hood*, supra (7 T. R. 620), 'no others can be resorted to.'"

In holding that these remedies must be adhered to exclusively, the Court cited the universal rule that:

> "The statute, under such circumstances, may be said to so far provide for the liability and to create

the remedy as to make it necessary to follow its provisions and to conform to the procedure provided for therein. See *Pollard v. Bailey*, 20 Wall. 520, 526; *Fourth Nat. Bk. of Francklyn*, 120 U. S. 747, 756; *Evans v. Nellis*, 187 U. S. 271."

If it is a fact, as the petitioner argues, that the granting of the requested relief herein is necessary to effectuate the purposes of the act because otherwise the act would be inadequate to fully protect the property rights involved, the answer is simple. Congress can further amend the act to give this additional power and authority, as it did when Sec. 205 (e) was amended by the Stabilization Extension Act of 1944 (infra). But as the Court points out in the *Globe Newspaper* case, supra, merely because the act is inadequate is no reason for the *courts* to enlarge by judicial legislation the specific authority granted. Apparently, as we shall see hereinafter, Congress did feel that the original act as it was first passed was not adequate to fully protect the property rights of the individuals. It was for this reason that Sec. 205 (e) was amended. Having amended Sec. 205 (e), as it did, apparently Congress feels that that is all that is necessary.

Hassel v. U. S., 34 Fed. (2d) 34. This was an action under the Prohibition Act (27 U. S. C. A., Sec. 34). The usual order for the abatement of a nuisance under the act was made. In addition, the Court went further and decreed the forfeiture of certain property. The Circuit Court pointed out that this suit in equity was brought under Sec. 22 of the act which provides for abatement, and not under Sec. 25, which provides for forfeiture of property. There was no prayer, the Court said, for the forfeiture and destruction of the property, although the bill contained the usual prayer for general relief.

The Court, in holding that no such remedy (as forfeiture) is provided for in Sec. 22 of this act, and that hence the action would not lie, said: "That the remedy in an action provided by a statute is that which it particularly prescribes, or, stated differently, where a statute defines a proceeding and prescribes a remedy, the statutory remedy is exclusive seems to be sustained by an unvarying line of judicial decisions running through both state and federal jurisdictions (cases cited). * * * No authority to the contrary has come to our attention."

Jones v. Securities and Exchange Commission, 298 U. S. 1. After a registration statement had been filed with the Securities and Exchange Commission by appellant, the Securities and Exchange Commission issued a stop order (the equivalent of an injunction) and registrant attempted to withdraw the statement before it could become effective under the act. Withdrawal was refused. Aside from the following language, the case is not in point.

> "The action of the Commission finds no support in right principle or in law. It is wholly unreasonable and arbitrary. It violates the cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest—that this shall be a government of laws—because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy. * * * The admonition of Mr. Justice Bradly in *Boyd v. U. S.*, 116 U. S. 616, 635, should never be forgotten: 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. * * * It is the duty of courts to be watchful for the constitutional rights

> of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis.' * * *
>
> "And if the various administrative bureaus and Commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments —even petty encroachments—upon the fundamental rights, privileges and immunities of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

U. S. v. Babcock, 250 U. S. 328. This case involved the question of the proper remedy for an army officer to pursue to recover for the loss of a horse, and whether the authority conferred by Congress upon the Court of Claims gave the necessary jurisdiction. In holding that Congress had expressly conferred upon the Treasury Department exclusive jurisdiction and to make its (the Treasury Department's) decision final, the Court said: "That where a statute creates a right and provides a special remedy, that remedy is exclusive" (cases cited).

C. The legislative history of the act clearly discloses no intent on the part of Congress to make reparation orders available to the Administrator.

It must be remembered that this is a compliance proceeding and not an action brought under the provisions of Sec. 205 (e), which provide for the imposition of statutory penalty by way of monetary compensation to be imposed upon the defendant.

Thus, the argument advanced by petitioner that Sec. 205 (a) was broad enough to authorize the Court to compel restitution at the suit of the Administrator without

the enactment of Sec. 205 (e) is without merit. If Congress had intended to grant, under Sec. 205 (a), the power to order restitution, it could have done so by the simple expedient of saying so.

We believe the intent of the Congress to be amply set forth in Senate Report No. 931 of the 77th Congress, Second Session. On page 8 thereof, under the heading "Enforcement" the following language is used:

> "To discourage initial violations, the Committee substitute provides for actions at law to recover $50 or three times the amount of the illegal overcharges. This will permit private purchasers who buy for personal use or consumption, rather than in the course of trade or business, to protect themselves against violations of the Act. The bill, in addition, authorizes the Administrator to issue or require licenses where he deems such action necessary to assure effective enforcement. *The bill also authorizes the Administrator to seek a court injunction against violations of the Act, and* provides for the punishment of the most flagrant violations by criminal prosecutions subject to the supervision and control of the Department of Justice."

After this full discussion of this provision providing for enforcement, on page 9 we find a subdivision of the previous hearing of "enforcement," labeled "(b) Actions to Recover Damages." The question of this type of action is fully discussed and the intention declared in the following words:

> "(b) Actions to Recover Damages.—Such actions have proved valuable in the enforcement of other regulatory statutes, such as the Fair Labor Standards Act, both to relieve the Government of a part of the burden of enforcement and to deter initial violations. They afford a remedy at law to persons damaged by having had to pay unlawfully high prices. An action of this sort may be brought by any person who buys for use or consumption

other than in the course of trade or business, to recover from the seller who violates a price regulation, or price schedule, damages in the sum of $50 or treble the amount of the unlawful overcharge. * * * The same remedy is made available to persons who pay excessive rentals for defense-area housing accommodations. * * *.

"All such actions may be brought in any Federal Court or State Court of competent jurisdiction, and must be instituted within 1 year after delivery is completed or rent is paid. The further provision that the Administrator may sue on behalf of the United States not only where the United States is the consumer but also if the buyer is not entitled to bring suit will apply to situations in which the buyer is barred for bad faith or for some other reason, or in which the buyer is a purchaser in the course of trade or business. * * *."

The next discussion of the general scheme of enforcement is set forth in subdivision "(c) Suits to Enjoin Violations," which is that portion of the enforcement proceedings pertaining to Sec. 205 (a) of the act. It will be observed that in each instance there is a complete segregation in the discussion of the various schemes and modes of enforcement. In the discussion of Sec. 205 (a) there is not the slightest reference of any kind indicating an intention on the part of the Congress or the drafters of the act to include reparations or restitutions as part of injunction proceedings. We quote from that section of the discussion and report as follows:

"(c) Suits to Enjoin Violations.—In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the Act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such

courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case."

The further intention of the Congress relative to Sec. 205 (a) may be found further on in the Senate Report No. 931, at page 25. There, under a heading entitled: "Injunctions and Compliance Orders," we find a further explanation of the purposes and the scope of Sec. 205 (a), in words and figures as follows:

> "Section 205 (a) authorizes the Administrator to enforce compliance with the provisions of Section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of Section 4, by making application to the appropriate court for an order enjoining such acts or practices, *or for an order enforcing compliance with such provision.* Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond."

The Court's attention is directed specifically to these words: "or for an order enforcing compliance with such provision." This indicates quite clearly that while the drafters of the act may not have known exactly the type of order that would be necessary to enforce compliance with the provision, nevertheless, there is no indication of an intention to order reparations.

D. The legislative history of the act by the amendment to Sec. 205 (e) so as to enlarge the right of the Administrator to secure reparations clearly indicates that there was no intention to grant the power to seek and award reparations or restitutions under Sec. 205 (a).

As a matter of fact, as we shall see, Sec. 205 (e) was amended by the Stabilization Extension Act of 1944,

58 Stat. 640, 50 U. S. C. A. 901, for the purpose of giving the Administrator the power to obtain reparations which he had not heretofore had. If this were not so, there would have been no need for the amendment. The full discussion of the entire matter and the problems to be solved, as well as the purpose of the amendment, are fully set forth below showing the intention of Congress and of the Administrator, in Senate Report No. 922, 78th Congress, Second Session (p. 13):

"Suits for Damages.

"Section 108 of the bill amends subsection (e) of Section 205 of the Emergency Price Control Act. This subsection *now* provides for bringing actions for damages against sellers of commodities or landlords on account of overcharges in violation of the applicable maximum price or rent. In the case of the sale of commodities for use or consumption other than in the course of trade or business, which is generally the ordinary sale at retail, *and in the case of rents, the action may be brought only by the person who buys the commodity or pays the rent.* In other cases, the buyer is not entitled to bring suit and suit may be brought by the Price Administrator on behalf of the United States. * * *

"*This* bill amends the present law with respect to the amount of damages which may be recovered in actions under this subsection. * * *

"Suggestions for the further relaxation of the provisions of this subsection have been made to the committee, particularly with respect to the elimination of the $50 minimum. The committee believes this minimum should be retained. This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement. It will be effective *only* if consumers are given a sufficient incentive for taking action. * * *

"*The bill further amends this subsection so as to strengthen it by authorizing the Price Administra-*

tor to bring a suit for the damages on behalf of the United States in those situations where the present statute authorizes suits only by the consumer, if the consumer does not bring an action within 30 days after the violation. * * * *This procedure*, by providing a quick and effective remedy for violations which are of a minor character, *will close an important gap in the present system of enforcement sanctions.*"

We feel that the Circuit Court has very clearly stated what appears from the foregoing to be the obvious, by these words from its decision (R. 52):

"Evidently it was found that Sec. 205 (e), as originally enacted was ineffective, and it was therefore amended so that the Administrator might enforce the remedy provided by that section if the persons who were entitled to it failed to act promptly. The fact that Congress amended Sec. 205 (e) so as to enlarge the right of the Administrator to secure the reparations therein provided for, militates against his contention here that under Sec. 205 (a) he always had the right to seek, and the court the power to grant, reparation orders to effectuate the purpose of the Act."

1. The exercise of such a power would lead to absurd, illogical and unconscionable complications and situations not contemplated by the Congress, and obviously unjust, inequitable and not within the purview of the act.

The complications that could arise if the relief asked for were granted and an order of restitution were made can well be observed in the following situations: Let us suppose that the Court would order restitution and one or more of the tenants were dissatisfied with the order so made by the Court. The tenant, not being a party to the action, would have no right of appeal and could do nothing about the order of restitution whatsoever except to bring an action under the provisions of Sec. 205 (e)

for treble damages. To that the landlord would have to plead res judicata. The question would then arise whether or not the order of restitution made by the Court was or was not res judicata inasmuch as the tenant was not party to that action. If the proceedings should be held res judicata the tenant is deprived of a remedy specifically afforded him by the statute. If it should be held not to be res judicata, then why should the order of restitution be made?

Let us suppose further that the order of restitution would be made from which the defendant would appeal. Upon appeal that order might be reversed or amended or otherwise modified without the tenant at any time ever being a party to the proceeding. This would leave the landlord, after the appeal in his favor, in a position whereby he might be subject to a subsequent suit by the tenant upon a matter already ostensibly adjudicated in his favor yet having been burdened by the costs and labor of appeal. The appeal thereupon in effect would become a nullity and an idle gesture.

If the Court could make any order it wished under the petitioner's interpretation of "or other order," why would it not be possible for the Court to make an order requiring not only a refund but treble damages or $50 for each violation, even though the latter would be repugnant to Sec. 205 (e) as amended? By the same process of reasoning, why couldn't the Court make such an order imposing a penalty of $10,000 or any other amount, even though that also might be repugnant to other provisions of the act? The absurdities of such an interpretation are obvious.

E. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done, because the relief and power so granted is granted specifi-

cally and directly to the administrative body involved.

Petitioner becomes quite eloquent in his brief, in stating that the issuance of such an order is, "in light of the large objectives of the Act" and "to undo the inflationary effects of violations." Other similar phraseologies are employed and an analogy is made to other administrative acts. The claim is made that with regard to these acts an equity court has required affirmative action to restore the status quo. However, an analysis of the particular acts referred to by petitioner leads one to this inevitable conclusion: That where such relief has been granted by the Court it has been granted, (1) because the power to order the relief requested was specifically granted to the particular Administrator or enforcement body charged with the enforcement of the act. (2) That under the rule that where the findings and orders of the administrative body are supported by the evidence, the Court is bound to uphold the findings and order of the Administrator, Commissioner or other enforcement official. We shall consider each of these acts.

Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C., Sec. 217.

The power of the Court to award back pay in connection with an injunction flows not from the inherent power of a court of equity to restore the status quo, but from the direct, specifically worded provisions of the power granted the National Labor Relations Board to make such orders. And from the power of the Court to enforce the orders of the board where the findings and orders of the board are sustained by the evidence, according to the tests stated in *Interstate Commerce Commission v. Union Pac. R. R. Co.*, infra.

Sec. 10 (c) of the National Labor Relations Act (29 U. S. C. A., Sec. 160 (c)) empowers the board as part of its cease and desist orders "to take such affirmative action, including reinstatement of employes *with or without back pay,* as will effectuate the policies of this chapter."

The courts, therefore, in sustaining the findings and order of the board *must* grant the injunction and order the back pay asked for by the board. The power is thus granted specifically and the courts have so held. We shall discuss in connection with these various acts, the cases cited by petitioner.

The finality of administrative rulings and the power and authority of the courts in upholding them has been well defined and discussed in *Interstate Commerce Commission v. Union Pac. R. R. Co.,* 222 U. S. 541; 32 S. Ct. 108, 56 L. Ed. 308, wherein Mr. Justice Lamar said:

> "It has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of law, * * * (4) * * * in violation of the constitutional prohibition against taking property without due process of law; or (5) * * * without evidence to support it; or (6) * * * authority * * * exercised in * * * * an unreasonable manner * * *" (see cases cited).

Agwilines, Inc., v. National Labor Relations Board, 87 Fed. (2d) 146 (5th Circuit), 1936. A cease and desist order of the National Labor Relations Board required the company to cease and desist from bargaining collectively with a company controlled labor union, and in addition to pay back pay to employes wrongfully discharged for union activities. This was brought under

subsection (f), Sec. 10 of the act (29 U. S. C. A., Sec. 160 (f)).

Petitioner claimed that "its constitutional rights are violated * * * the claim, the statute in question gives to the injured employe upon his unfair discharge, a legal action for damages, an action triable at common law, and not otherwise, and that therefore an award for damages against it may not be made administratively, but only upon and pursuant to a jury trial." The Court said:

> "A short and simple answer to this contention is found in the fact that as between employer and employe the statute confers *no* right of action triable by a jury or otherwise. No provision in it authorizes an employe to make claim. The Act does not purport to confer, it does not confer, private rights. * * * (cases cited) * * * The procedure the statute outlines is not designed to award, the orders it authorizes do not award damages as such. *The proceeding is not, it cannot be made, a private one to enforce a private right.* It is a public procedure, looking only to public ends. * * * Ample precedent exists in the Federal Trade Commission Act (15 U. S. C. A., Sec. 41, et seq.) * * *. The statute fixes no tenure for employment, it gives no cause of action for discharge. * * * Ample precedent for this kind of statute exists in Workmen's Compensation Acts[2] * * * 'as between employe and employer, the Act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury.' *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 S. Ct. 260, 264, 61 L. Ed. 685, Ann. Cas. 1917 D, 642; *N. Y. C. R. Co. v. White*, 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667, L. R. A. 1917 D, 1, Ann. Cas. 1917 D, 629; *Roiwlette v. Rothstein Dental Laboratories*, 64 App. D. C. 373, 63 Fed. (2d) 150."

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[2]Hence, Court considers basis for this type of holding in connection with other acts, to be the same.

Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177. In this case, where the National Labor Relations Board ordered back pay in connection with other relief, the Court aptly demonstrated respondent's contention here. That is, that the reason why such decrees are not analogous to the situation at bar, is because of the grant by Congress of that power, authority and jurisdiction, by language specific and direct, "The remedy of back pay, it must be remembered, is entrusted to the Board's discretion." The Court said further, "and in applying its authority over back pay orders, the Board has not used stereotyped formulas but has availed itself of the freedom given it by Congress to attain just results in diverse, complicated situations." No such freedom is granted the Office of Price Administration, or the Court, under Sec. 205 (a).

Texas & N. O. R. R. Co. v. Brotherhood of Ry. Clerks, 276 U. S. 475, cited by petitioner, has no bearing upon the case at bar at all.

Texas & N. O. R. R. Co. v. Northside Belt Ry. Co., 276 U. S. 475. Holds: Where a defendant, with notice of the filing of a bill for an injunction, proceeds to complete the acts sought to be enjoined, the Court may, by mandatory injunction, compel a restoration of the status quo. It is obviously not in point here.

Virginia Electric & Power Co. v. N. L. R. B., 319 U. S. 533. This is another case where "Section 10 (c) of the Act (29 U. S. C. A., Sec. 160), authorizes the Board to require persons found engaged or engaging in unfair labor practices 'to take such affirmative action, including reinstatement of employes *with or without back pay*, as will effectuate the policies of this Act.'"

This case is therefore directly in point with appellee's principle of the granting of mandatory relief specifically

provided for only where set out by language specific and direct.

The reasoning of the Court in *Walling v. O'Grady*, 146 Fed. (2d) 422, relied on by petitioner, is therefore erroneous. There the Court said: "In such case such reparation is necessary to restore the status quo interfered with by the unlawful conduct of the employer and in neither case is there a statutory mandate spelling out all the details of relief necessary for the purpose in hand." That this is clearly not so may be seen from the following statement by this Court.

N. L. R. B. v. Jones & Laughlin Steel Corp., 381 U. S. 1. In this case, payment of back wages was ordered by the Court as an incident to injunctive relief. The jurisdiction and authority of the Court was challenged. "Respondent complains that the Board not only ordered reinstatement but directed the payment of wages for the time lost by the discharge, less amounts earned by the employe during that period."

The analogy of that case to the one at bar as asserted by petitioner, is non-existent, because in that case the authority and jurisdiction to order the defendant to pay back pay (make restitution) is granted by the act itself, in language specific and direct. The Court said: "This part of the order was also authorized by the Act. Sec. 10 (c)."

But in addition to the foregoing, the reasoning employed by the Circuit Court in the matter at bar further distinguishes this situation from that in *Walling v. O'Grady*, supra. The Circuit Court stated (R. 53):

> "However, Section 17 of the Fair Labor Standards Act * * * authorizes the Federal District Courts broadly, 'to restrain violations.' The statutory remedy may thus be regarded as general and cumulative, rather than specific and exclusive. It is to

> be noted that in *Walling v. O'Grady,* supra, p. 423 of 146 Fed. (2d), the Court was careful to distinguish the case from that of *Decorative Stone Company v. Building Trades Council* (supra), in which it was held that the statutory remedies prescribed by the Clayton Act were exclusive."

A further distinguishing feature is indicated by the memorandum of the lower court (R. 26) which analyzes *Walling v. O'Grady,* supra, which reversed *Walling v. Miller,* 138 Fed. (2d) 629, in support of petitioner's contention that that case held that the Court has the power to order restitution to employes in actions brought under the Fair Labor Standards Act. That memorandum states in substance that had that case so held, it might be another matter. However, such was not the holding of the Court. This case was an appeal from the District Court of the United States, Fourth District of Minnesota. The Administrator of the Wage and Hour Division of the Department of Labor had filed a complaint demanding judgment enjoining and restraining the defendants from violating the provisions of the Fair Labor Standards Act. On the same day the petition was filed a stipulation of the parties was filed *and a consent decree was entered.* In the stipulation the defendants waived answer and any defenses to the complaint and consented to the entry of a final judgment *including the payment of sums of money by way of restitution* to certain employes which would have been paid to them had they been compensated for their employment during the period in question, as required by the provisions of the Fair Labor Standards Act. The decree entered with the express consent of all the defendants granted the relief demanded and made the stipulation a part thereof and required the defendants to make the restitution included therein.

Subsequently the defendants filed a motion to vacate the decree, on several grounds. One was that the Fair Labor Standards Act does not authorize the plaintiff to maintain a suit for restitution of wages that may be due by virtue of any violation of Sec. 15, but that such power is granted solely to employes by Sec. 16. That therefore the Court was without jurisdiction in an injunction suit brought by the plaintiff to order restitution of wages, even though consented to by defendants.

After a hearing, the Court found that it had jurisdiction over the general subject-matter of the action and over the parties but that "because Sec. 16 (b) of the Fair Labor Standards Act gives to the employes a right to recover their wages and because Sec. 17 does not expressly permit the recovery of wages in an action brought under Sec. 17 any incidental powers which the Court might have under that section are withdrawn, for when a statute creates a right (or liability) and gives the specific remedy for its enforcement, that remedy is the exclusive one. Therefore, the Court lacked jurisdiction to grant restitution in this action."

From the part of the ruling granting "a vacation of the decree's order to make restitution of the back wages to their employes" the Administrator appealed.

The Court in rendering its decision said:

> "If the Court entering the decree had jurisdiction both of the general subject-matter and of the parties, any objection to the merits is reviewable on appeal and is not open on a motion to vacate. *Swift Co. v. United States*, 276 U. S. 311, 48 Sup. Ct. 311. * * * *We think the defendants confuse the power of the Court to adjudicate a controversy under the Act with the capacity of the parties to maintain the action.* Assuming, but not deciding that the Administrator is not authorized in the first place to maintain a suit for restitution and that only the

employes may do so, the inclusion of the Order for restitution in the consent decree did not go to the jurisdiction or power of the Court but to the merits only. * * * By jurisdiction we mean power to entertain the suit, consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought. There may be jurisdiction and yet an absence of merits, as where the plaintiff seeks preventative relief against a threatened violation of law of which he has no right to complain, where because it will not injure him or because the right to invoke such relief is lodged exclusively in an agency charged with the duty of representing the public in the matter. Whether a plaintiff seeking such relief has the requisite standing is a question going to the merits and its determination is an exercise of jurisdiction. * * *."

It will be observed therefore that this was a consent decree which was entered into at a time when the lower court had jurisdiction of both the parties and the subject-matter and that this point was not challenged by the defendants on appeal. By virtue of the language of the Court, as quoted above, the power of the Court to order restitution was not involved; the real point being involved was the question going to the merits, i. e., the Administrator's capacity to act as a plaintiff in such an action. The holding of the Court, therefore, is solely that by entering into the consent decree the defendants had waived the right of the Administrator to attack the modifying order. With this in mind, the following quotation from the *Miller* case, supra, covers the entire point in the case. The Court said at page 632:

"The contention may be sound that the Administrator lacked authority to maintain an action for restitution because the statute having created a right (a liability) and having given a special remedy for its enforcement, that remedy is exclusive; but, if

such contention be correct, it shows *only* that the Court erred in rendering the decree and in finding at that time that the remedy given the employes is not exclusive. The error pertained *only to the capacity of the plaintiff and to the remedy, not to the power of the Court.* Whether the Administrator 'has the requisite standing' to maintain a suit for restitution 'is a question going to the merits,' and the decree is not subject to attack for such an error by motion to vacate. *General Investment Company v. New York Central Railroad*, 271 U. S. 228, 46 Sup. Ct. 496. The right of the Administrator to make such an attack was waived by the defendants. *The inherent power of the Court to enter the order appealed from is not involved.* It was error to sustain the motion." (Italics ours.)

Federal Alcohol Administration Act, 49 Stat. 985, 27 U. S. C. A., Sec. 207.

The power of the Court to couple with a fine (comparable to restitution) an injunction under this act (27 U. S. C. A., Sec. 207) is also granted specifically in language direct and specific. This section reads in part:

"Any person violating any of the provisions of Section 203 or Section 205 of this title shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000.00 for each offense. The Secretary of the Treasury is authorized, with respect to any violation of this chapter, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation."

Under this act, as also the Fair Labor Standards and National Labor Relations Acts, the power in the Court implies the power to make effective this (and these) act (or acts) and to carry out and give effect to and enforce the orders of administrative officers legally made thereunder. *Strauss v. Berkshire* (C. C. A., 1943), 132 Fed. (2d) 530.

Federal Food, Drug and Cosmetic Act, 52 Stat. 1043, 21 U. S. C., Sec. 332.

For the same reasons condemnation and or fine and injunction may both lie against a defendant for violation of this act where prayer for condemnation and prayer for injunction grew out of the same transaction and basic issues were identical. *U. S. v. 184 Barrels Dried Whole Eggs,* 53 Fed. Supp. 652. The reason is obvious. Section 332 (a) in words specific and direct gives the District Courts of the U. S. jurisdiction to restrain violations of Section 331. Subdivision (b) provides for the method of trial in violation of injunction cases. Section 33 provides for penalties for violation of Section 331 by fine, imprisonment or both, Section 334 provides for seizure and condemnation of articles introduced into interstate commerce which violate the provisions of the act.

Federal Power Act, 49 Stat. 861, 16 U. S. C., Sec. 825 (m).

Exactly the same principles apply to violation of this act and the power of the courts to grant injunctive relief with other penalty or penalties.

Section 825 (m) provides for the granting of injunction where "any person is engaged or about to engage in any acts or practices which constitute or will consti-

tute a violation of the provisions of this chapter, or of any rule, regulation, *or order* therunder * * *."

Section 825 (n) provides for forfeiture and fines to be imposed for violation and says in addition: "The imposition or payment of any such forfeiture shall not bar or affect any penalty prescribed in this chapter but such forfeiture shall be *in addition* to any such penalty."

Hence, an order of the Commission including therein any or all of the foregoing would be reviewable by the Circuit Court of Appeals, and if the findings and orders were supported by the evidence, would become final. *Carolina Aluminum Co. v. Fed. Power Commission* (C. C. A., 1938), 97 Fed. (2d) 435.

4 Hot Oil Act, 49 Stat. 33, 15 U. S. C., Sec. 715.

Similar specific grants of power and authority are granted under this act, with a like result.

Section 715 (e) provides for fine, imprisonment, or both.

Section 715 (f) provides for forfeiture of contraband oil. It provides also that after such seizure and forfeiture "in any such case the Court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture."

Section 715 i(a) grants specifically the power "to issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any regulation issued thereunder."

Section 715 i(b) grants specifically to the District Court the power "to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond."

Small wonder, therefore, that upon proper findings by the board and order issued thereunder, sustained by the evidence, the Court would grant mandatory relief.

Natural Gas Act, 52 Stat. 833, 15 U. S. C., Sec. 717.

Section 717 S(a) of this act authorizes the commission to "bring an action in the proper District Court * * *, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, *or order thereunder*, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond."

Section 717 S(b) provides that "upon application of the Commission" the courts "shall have jurisdiction to issue writs of mandamus * * *."

Section 717 T(b) provides that violators "shall, in *addition* to any other penalties provided by law, be punished * * * by a fine. * * *."

Public Utility Holding Companies Act, 49 Stat., 831, 15 U. S. C., Sec. 79.

Section 79 r(f) of this act also grants the right of this commission to apply to the proper Court for violation of or prospective violation of "any rule, regulation, or order thereunder, * * * to enjoin such acts or practices * * * or order * * *, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond."

Section 79 r(g) provides that upon application of the commission, the courts "shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter * * * or order of the Commission thereunder."

As long, therefore, as the relief and findings are sus-

tained by the evidence of the commission and confined to the specific grants of power and authority conferred by the act, the orders of the commission or other administrative body will be enforced. But if exceeded, they will not be.

In *Securities and Exchange Commission v. Long Island Lighting Co.*, 148 Fed. (2d) 252 (C. C. A. 2, Feb. 23, 1945), there was an appeal by the commission from an order of the court below (D. C., E. D. N. Y.) denying its plea for an injunction to restrain an exempted public utility company from carrying out a plan of reorganization. The commission argued that since it had begun proceedings to revoke the exemption accorded the company under Section 3 (a) 1, the Court had power to preserve the status quo. The Court, however, affirmed the lower court decision, on the ground that the utility company had been exempted from the provisions of the act; hence, had disobeyed no order or regulation of the commission. The Court further held that *no provision had been made in the act for situations of this kind, and that it had no power to issue an injunction.*

Securities Act of 1933 and 1934, 48 Stat. 86, 15 U. S. C. 77; 45 Stat. 899, 15 U. S. C. 78.

The enforcement provisions of these acts are the same as those of the Public Utility Holding Companies Act.

These acts hereinbefore referred to and the cases quoted herein in connection therewith result in this conclusion: that in each instance there is a specific grant of authority to the particular Administrator or Commissioner, as the case may be, to encompass in an order, injunctive or mandatory relief. Upon a determination by the Court that the findings and order were sustained by the evidence, the Court was bound to grant a decree

consistent with the expressly delegated powers of the Administrator or commission, upon which the order was predicated. In view of the fact that there is no such expressly delegated power to the Administrator, in Sec. 205 (a), the situation is not at all analogous to decisions under the Fair Labor Standards Act and the other acts hereinbefore referred to.

2. The mandatory relief granted *and or* the restoration of the status quo in administrative proceedings in connection with other acts has been done because the violation itself requires mandatory relief.

It is upon this basis that mandatory relief restoring the status quo of the parties has been granted in proceedings under the Sherman Anti-Trust Act.

Sherman Anti-Trust Act, 36 Stat. 1167, 15 U. S. C., Sec. 4.

Sec. 3 of this act provides that "every contract, combination in form of trust or otherwise, * * * is declared illegal.

The right to injunctive relief and power to grant it is provided in Sec. 4.

Even though *acts* may be enjoined, the combination, etc., must be dissolved else there will be a continuing violation.

Standard Oil Co. v. U. S., 221 U. S. 1. While it is true that in this case the Court, in addition to enjoining future acts, required by order, affirmative acts to restore the status quo, by requiring stock held in trust to be distributed to stockholders, it did so with these two elements present: (1) "The condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize but also

a monopolization * * *" (p. 77). That is to say, even though enjoined from certain acts in the future, there would be a continuation of the monopoly, if its *existence* were allowed to continue. (2) There being no other remedy granted as a means of "compelling obedience to the law" (p. 81). Or stating it another way, had the Sherman Act had some other *or additional* provision whereby an adequate remedy at law was specifically granted by the statute, there is no question but what a relief would have had to have been granted consistent with and limited to that provision. For the Court says at page 77: "As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential."

Vaugh v. Winston, 83 Fed. (2d) 370. Here, an order requiring the defendant to publish retractions of a libel was attacked on the grounds the Court did not have the authority to require this affirmative act to be done. That this contention is obviously wrong we know. The point, in so far as it affects the case now before the Court, is amply answered by these words of the Court: "It is the only appropriate means of rectifying the wrong done."

In the case at bar such is not the fact. An adequate remedy is provided for in Sec. 205 (e).

U. S. v. Crescent Amusement Co., 323 U. S. 173. This case goes on the same principle of law as the *Standard Oil* case, supra, and that is: "Dissolution of the combination will be ordered where the creation of the combination is itself the violation." In other words, even though future violations are enjoined, the continuance of the existence of the monopoly, which itself is the violation, creates of itself a continuing violation. We have

no quarrel with that principle. It simply has no bearing on the case at bar.

U. S. v. Union Pac. Ry., 226 U. S. 61. This case is the same in principle and application to the above.

3. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done by consent decree.

This particular point is referred to in connection with *Walling v. Miller*, supra, which was in the first place a consent decree.

It is interesting to note that in the lower court the petitioner cited a number of unreported cases in support of its contentions at that time. Apparently, however, because it was pointed out then; that those were consent decrees, petitioner has now abandoned any reliance upon those decisions. It is significant to note, however, that in addition to the foregoing another ground or justification for granting mandatory relief is the inherent right of parties to consent to any kind or type of decree they desire. This further distinguishes the present situation from the case of *Fleming v. Alderman*, 51 Fed. Supp. 800, relied upon by petitioner in its brief.

Fleming v. Alderman, supra, was a civil action for contempt of Court. A *consent* decree had been agreed upon between the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, 29 U. S. C., Secs. 206, 207, 216, 217. By its terms, the agreement required the restitution on a stipulation between the parties of certain amounts to employes and certain other injunctive relief. All was not paid as agreed upon. This action ensued. Respondents attempted to justify themselves on the ground the Court had no jurisdiction to enter such an order in the first place.

The decision answers petitioner's argument on this particular point. The Court said:

> "The respondent's motion must be denied. For this court had jurisdiction under Section 17 of the Act, 29 U. S. C. A., Sec. 217, to restrain violations of Sections 6 and 7. Under Section 16 of the Act, 29 U. S. C. A., Sec. 216, it has jurisdiction to punish violations of Sections 6 and 7 as criminal violations and to award damages resulting from violations of Sections 6 and 7 in civil actions brought by employes. Plainly the court had a broad jurisdiction over the general subject-matter of such violations. And its jurisdiction over the persons of the defendants was unquestioned; *they appeared and consented in writing to the decree. Swift & Co. v. U. S.*, 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587; *Fleming v. Warshawsky & Co.*, 123 Fed. (2d) 622.
>
> "And if the court had jurisdiction as just described, the respondents may not now be heard to complain of any supposed error in the order. This proposition also is sustained by the cases cited. See also, *S. E. C. v. Jones*, 2 Cir., 85 Fed. (2d) 17; *U. S. v. Swift & Co.*, 286 U. S. 106, 117, 52 S. Ct. 460, 76 L. Ed. 999; and *Howat v. Kansas*, 258 U. S. 181, 42 S. Ct. 277, 66 L. Ed. 550.
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> "To a contrary effect is *Fleming v. Miller*, D. C., 47 Fed. Supp. 1004, 1008, upon which respondents largely rely. But that decision in my view rests upon a jurisdictional test too narrow. * * * And apparently it was thought that the court sitting in a statutory proceeding under the Act, was invested only with the jurisdiction expressly conferred by the Act and must view itself for purposes of the statutory proceeding as shorn of its general equitable jurisdiction. Throughout the decision is predicated upon some distinction between jurisdiction with respect to back wages and jurisdiction with respect to wages accruing in the future.
>
> "I find no basis for this distinction in the Act. Section 17 authorizes injunctions to restrain 'violations' of Section 15, into which Sections 6 and 7 are incorporated by *express reference*. It contains no

language which limits its effect to violations with respect to wages earned thereafter.

"Section 6 provides: 'Every employer shall pay.' etc. It can be violated *only* by failure to discharge the affirmative duty created by the Act. * * *

"Since the statutory obligation is to 'pay,' it is not discharged until payment is completed."[3]

F. The restoration of status quo must be predicated upon jurisdiction of the subject-matter and of the parties.

The trial court found that "there is some evidence in this case that in a treble damage action defendant may have valid counterclaim against certain tenants for damage to or theft of its property. The tenants are not parties to this proceeding" (R. 27).

The subject-matter in a restitution proceeding would be the respective amounts due between the landlord and tenants for overcharges on the one hand, and offset and counterclaim on the other hand. The parties involved would be the landlord and tenants. The lower court propounded a question which we believe to be of considerable significance. The Court said at page 28 of the record:

> "One might well pose the question: Could this court, without a jury, adjudicate the amount of restitution in each of the 20 rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendants having an opportunity to interpose valid counterclaims as a defense."

We have been unable to find any case of any kind in any jurisdiction where mandatory relief was granted, where the subject-matter and the parties were not before the Court. In the following two cases cited it is noted

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[3]The vast difference between this act and Sec. 205 (a) of the act in the case at bar is obvious. Sec. 205 (a) has no wordage to the effect that it shall or shall not be the duty to pay, or words comparable thereto.

that in each instance the Court refers to the fact that the subject-matter and parties are subject to the jurisdiction of the Court and parties to the action.

U. S. v. Bausch & Lomb Optical Co., 321 U. S. 707. Here, in addition to an injunction enjoining the defendants from certain well defined violations of the Sherman Anti-Trust Act and the Fair Trade Practices Act, the Court granted to the Department of Justice, by order, certain rights of visitation, investigation and search of the books, records, etc., of the defendants.

The Court, in justifying this latter portion of the decree, did so on the ground that it was necessary in order to ascertain future violations without the necessity of further trials and if it "tends to dissipate the restraints and prevent evasions" (p. 726) of the injunction. However, it is noted, that the Court examines with care the fact that said order runs against a party *only*. In the footnote No. 6 at page 725, the Court said: "The wording of the sentence includes the papers of the individual defendants who are officers of the Soft-Lite. The United States disclaims in its brief, page 55, so broad a meaning. We accept the suggested interpretation that the paragraph relates only to the papers belonging to the corporation." If the decree affected in any way a person or subject-matter not a party to the action, in view of the following additional words, we doubt that the Court would have upheld the decree. At page 726 the Court said further: "The first sentence of the provision of the decree under discussion compels the disclosure only of papers relating to the matters contained in the judgment."

In the case at bar, if restitution were ordered, the appellee would have the right of offset and counterclaim,

thus bringing into issue matters *not* contained in the judgment.

The Salton Sea cases, 172 Fed. 792. All this case holds is that a Court of Equity which has acquired jurisdiction of a suit to enjoin a continuing trespass upon land, may also, to prevent a multiplicity of suits, award damages for the injury already done, although the same would also be recoverable by an action at law (see pp. 799 to 804, inclusive, and cases therein cited).

We find no quarrel with this long established principle of law. However, in all of the cases cited, and all the authorities quoted from on this point, there is not one in which damages were awarded either in favor of or against a person who was not a party to the action. Stated another way, all these cases presume the fact to be (and it is the fact) that the relief for injunction and damages is between the parties, and therein lies the distinction.

CONCLUSION

The decision of the Circuit Court is correct and well reasoned law. We respectfully submit that the decision of the lower court be affirmed.

Respectfully submitted,

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APPENDIX

Sec. 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under Sec. 2, or of any price schedule effective in accordance with the provisions of Sec. 206, or of any regulation, order, or requirement under Sec. 202 (2) or Sec. 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Sec. 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of Sec. 4 of this act, he may make application to the appropriate Court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Sec. 205 (e) prior to amendment provides:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by

the Court. * * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Sec. 205 (e) as amended by the Stabilization Extension Act of 1944, Pub. Law No. 383, 50 U. S. C. App., Sec. 925 (e), provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the Court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the Court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the Court in its discretion may determine: Provided, however, that such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regula-

tion, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any Court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

SUPREME COURT OF THE UNITED STATES.

No. 793. October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administration, Petitioner, vs. Warner Holding Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 3, 1946.]

Mr. Justice Murphy delivered the opinion of the Court.

In this case we are concerned with the power of a federal court, in an enforcement proceeding under § 205(a) of the Emergency Price Control Act of 1942,[1] to order restitution of rents collected by a landlord in excess of the permissible maximums.

The Warner Holding Company, the respondent, owns eight apartment houses in Minneapolis, Minnesota, containing approximately 280 dwelling units. Between November 1, 1942, and June 29, 1943, it demanded and received rents in excess of those permitted by the applicable maximum rent regulations issued under the Act. The Administrator of the Office of Price Administration then brought this action in the District Court to restrain the respondent from continuing to exceed the rent ceilings. The complaint was later amended to seek, in addition, a decree requiring the respondent "to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205(e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation."

The District Court enjoined respondent from continuing to collect rents in excess of the legal maximums but declined to order restitution. 60 F. Supp. 513. The Eighth Circuit Court

[1] 56 Stat. 23, 33; 50 U. S. C. App. § 925(a).

of Appeals affirmed the judgment. 151 F. 2d 529. Both courts held that there was no jurisdiction under the statute to order restitution. We granted certiorari because the result was in conflict with that reached by the Sixth Circuit Court of Appeals in *Bowles* v. *Skaggs*, 151 F. 2d 817, and because of the obvious importance of the issue in the administration and enforcement of the Emergency Price Control Act.

This proceeding was instituted by the Administrator under § 205(a) of the Act, which provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

Thus the Administrator invoked the jurisdiction of the District Court to enjoin acts and practices made illegal by the Act and to enforce compliance with the Act. Such a jurisdiction is an equitable one. Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 552. Power is thereby resident in the District Court, in exercising this jurisdiction, "to do equity and to mould each decree to the necessities of the particular case." *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329. It may act so as to adjust and reconcile competing claims and so as to accord full justice to all the real parties in interest; if necessary, persons not originally connected with the litigation may be brought before the court so that their rights in the subject matter may be determined and enforced. In addition, the court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the cir-

cumstances. Only in that way can equity do complete rather than truncated justice. *Camp* v. *Boyd*, 229 U. S. 530, 551-552.

Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." *Brown* v. *Swann*, 10 Pet. 497, 503. See also *Hecht Co.* v. *Bowles*, *supra*, 330.

It is readily apparent from the foregoing that a decree compelling one to disgorge profits, rents or property acquired in violation of the Emergency Price Control Act may properly be entered by a District Court once its equity jurisdiction has been invoked under § 205 (a). Indeed, the language of § 205 (a) admits of no other conclusion. It expressly envisages applications by the Administrator for orders enjoining violations of the Act and for orders enforcing compliance with the Act; and it expressly authorizes the District Court, upon a proper showing, to grant "a permanent or temporary injunction, restraining order, or other order." As recognized in *Hecht Co.* v. *Bowles*, *supra*, 328, the term "other order" contemplates a remedy other than that of an injunction or restraining order, a remedy entered in the exercise of the District Court's equitable discretion. An order for the recovery and restitution of illegal rents may be considered a proper "other order" on either of two theories:

(1) It may be considered as an equitable adjunct to an injunction decree. Nothing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief. To be sure, such a recovery could not be obtained through an independent suit in equity if an adequate legal remedy were available.[2] *White* v. *Sparkill Realty Corp.*, 280 U. S. 500; *Lacassagne* v. *Chapuis*, 144 U. S. 119. But where, as here, the equitable jurisdiction of the court has properly been

[2] But if a defendant with notice of a pending injunction proceeding completes the acts sought to be enjoined, the court of equity may restore the status quo by means of a mandatory injunction. Texas & N. O. R. R. Co. v. Northside Ry. Co., 276 U. S. 475; Porter v. Lee, 328 U. S. —.

invoked for injunctive purposes, the court has the power to do all relevant matters in dispute and to award complete relief even though the decree includes that which might be conferred by court of law. *Alexander* v. *Hillman*, 296 U. S. 222, 241-242.

(2) It may be considered as an order appropriate and necessary to enforce compliance with the Act. Section 205(a) anticipates orders of that character, although it makes no attempt to catalogue the infinite forms and variations which such orders might take. The problem of formulating these orders has been left to the judicial process of adapting appropriate equitable remedies to specific situations. Cf. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194. In framing such remedies under § 205(a), courts must act primarily to effectuate the policy of the Emergency Price Control Act and to protect the public interest while giving necessary respect to the private interests involved. The inherent equitable jurisdiction which is thus called into play clearly authorizes a court, in its discretion, to decree restitution of excessive charges in order to give effect to the policy of Congress. *Clark* v. *Smith*, 13 Pet. 195, 203. And it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes. Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums.

The legislative background of § 205(a) confirms our conclusion that the traditional equity powers of a court remain unimpaired in a proceeding under that section so that an order of restitution may be made. The Senate Committee on Banking and Currency, in reporting upon the bill which became the Emergency Price Control Act, stated in regard to § 205(a): "In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such courts are given jurisdiction to issue whatever order to enforce compliance is

proper in the circumstances of each particular case." S. Rep. No. 931, 77th Cong., 2d Sess., p. 10.[3] The last sentence is an unmistakable acknowledgement that courts of equity are free to act under § 205(a) in such a way as to be most responsive to the statutory policy of preventing inflation.

It is true that § 205(e) authorizes an aggrieved purchaser or tenant to sue for damages on his own behalf; and if that person has not sued within the statutory period, or for any reason is not entitled to sue, the Administrator may institute an action for damages on behalf of the United States.[4] To the extent that damages might properly be awarded by a court of equity in the exercise of its jurisdiction under § 205(a), see *Porter* v. *Williams*, 8 How. 134, 160, § 205(e) supersedes that possibility and provides an exclusive remedy relative to damages. It establishes the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties.[5] Moreover, a court giving relief under § 205(e) acts as a court of law rather than as a court of equity. But with the exception of damages, § 205(e) in no way conflicts with the jurisdiction of equity courts under § 205(a) to issue whatever "other orders" may be necessary to vindicate the public interest, to compel compliance with the Act and to prevent and undo inflationary tendencies.

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[3] The same report, at p. 25, also states: "Section 205(a) authorizes the Administrator to enforce compliance with the provisions of section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4, by making application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision. Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order shall be granted without bond."

[4] Section 205(e) as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 640-641; 50 U. S. C. App. § 925(e).

[5] Congress has recognized that this provision for damage suits affords "a remedy at law to persons damaged by having [to] pay unlawfully high prices." S. Rep. No. 931, 77th Cong., 2d Sess., p. 29. It has also been stated that "This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement." S. Rep. No. 922, 78th Cong., 2d Sess., p. 14. The amendment to § 205(e), whereby the Administrator was allowed to sue for damages under prescribed conditions, was said to "close an important gap in the present system of enforcement sanctions." *Id.* Nowhere, however, was there any indication that § 205(e) was intended to withdraw from the equitable jurisdiction recognized by § 205(a) so as to preclude a suit for restitution.

Restitution, which lies within that equitable jurisdiction, is consistent with and differs greatly from the damages and penalt which may be awarded under § 205(e). *Bowles* v. *Skaggs*, sup 821. When the Administrator seeks restitution under § 205(a does not request the court to award statutory damages to the pu chaser or tenant or to pay to such person part of the penalti which go to the United States Treasury in a suit by the Admin istrator under § 205(e). Rather he asks the court to act in th public interest by restoring the status quo and ordering the retur of that which rightfully belongs to the purchaser or tenant. Suc action is within the recognized power and within the highest tra dition of a court of equity. Thus it is plainly unaffected by the provisions of § 205(e).

Nor do we find any other provision of the Act that expressly or impliedly precludes a court from ordering restitution in the exercise of its equity jurisdiction under § 205(a). This is not a situation where a statute has created a right and has provided a special and exclusive remedy, thereby negativing any jurisdiction that might otherwise be asserted. *United States* v. *Babcock*, 250 U. S. 328. And it clearly is not an instance where equity jurisdiction is lacking because of a failure to exhaust prescribed administrative remedies. *Myers* v. *Bethlehem Corp.*, 303 U. S. 41. Rather it is an occasion where Congress has utilized, save in one aspect, the broad equitable jurisdiction that inheres in courts and where the proposed exercise of that jurisdiction is consistent with the statutory language and policy, the legislative background and the public interest.

It follows that the District Court erred in declining, for jurisdictional reasons, to consider whether a restitution order was necessary or proper under the circumstances here present. The case must therefore be remanded to that court so that it may exercise the discretion that belongs to it. Should the court decide to issue a restitution order and should there appear to be conflicting claims and counterclaims between tenants and landlord as to the amounts due, the court has inherent power to bring in all the interested parties and settle the controversies or to retain the case until the matters are otherwise litigated. *Mallow* v. *Hinde*, 12 Wheat. 193.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 793.—October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administration, Petitioner, *vs.* Warner Holding Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 3, 1946.]

Mr. Justice Rutledge, dissenting.

In the Emergency Price Control legislation Congress was as much concerned with remedies as with substantive prohibitions.[1] It knew that effectiveness of the latter depended altogether upon the scheme for enforcement. Accordingly, both in the original Act[2] and in later amendments,[3] it covered the matter of remedies in the greatest detail and precision. Those provisions were both jurisdictional and procedural. The general scheme was to confine as narrowly as the Constitution allows the rights of regulated persons to challenge provisions of the Act and regulations; and at the same time to create broad powers for enforcement, by various civil and criminal sanctions. *Yakus* v. *United States*, 321 U. S. 414, dissenting opinion 463. Congress did not take chances, in either respect, with inference or construction. It is not excessive to say that perhaps no other legislation in our history has equalled the Price Control Acts in the wealth, detail, precision and completeness of its jurisdictional, procedural and remedial provisions. *Yakus* v. *United States*, *supra*.

The scheme of enforcement was highly integrated, with the parts precisely fooled and minutely geared. Legal, equitable and criminal sanctions were included. Injured persons' remedies were

[1] See H. Rep. No. 1409, 77th Cong., 2d Sess., 12-13; S. Rep. No. 931, 77th Cong., 2d Sess., 8-9, 25-28; H. Rep. No. 4658, 77th Cong., 2d Sess., 26-27. "Price control which cannot be made effective is at least as bad as no price control at all. It will not stop inflation, and enables those who defy regulation to profit at the expense of the buyers and sellers who unselfishly cooperate in the interests of the emergency." S. Rep. No. 931, *supra*, p. 8.

[2] Section 205, 56 Stat. 23, 33-35.

[3] 58 Stat. 632, 640-641, amending subsections (c), (e), and (f) of § 205 as it was in the original Act and adding subsection (g).

dovetailed with and guarded against overlapping those given the Administrator. He can sue for damages and penalties, after the injured party has failed to do so in the time allowed;[4] to enjoin violation or secure an order for compliance, with temporary and permanent relief;[5] cause institution of criminal proceedings;[6] and require licensing of dealers with power to suspend the license and thus drive out of business.[7] This powerful battery of weapons does not call for reinforcement with armor not provided in the Act. It was equal to all tasks of enforcement which conceivably could arise.

Congress could not have been ignorant of the remedy of restitution. It knew how to give remedies it wished to confer. There was no need to add this one. Nor do I think it did so. It did not give it expressly. I do not think "other order" in the context of §205(a) includes it. For to have conferred it would have put the statutory scheme out of joint.

Section 205(e) gives the overcharged person his remedy, for damages with penalty, for a limited time. Thereafter the exclusive right to sue is the Administrator's, and what he recovers goes into the Federal Treasury, not to the overcharged person. This includes the amount of the overcharge, which is sued for here. These provisions taken together are a statute of limitations on the private right of recovery. Once the time goes by it

[4] Section 205(e), 50 U. S. C. § 925(e). See note 9.

[5] Section 205(a): "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond." 50 U. S. C. § 925(a).

[6] Section 205(b): "Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (e) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought." 50 U. S. C. § 925(b). Section 205(e), 50 U. S. C. § 925(e). See Kraus & Bros. v. United States, No. 198, O. T. 1945, decided March 25, 1946, note 4.

[7] Section 205(f), 50 U. S. C. § 925(f).

is cut off and the Government's right takes its place, in vindication of the public interest.[8]

Restitution, as here sought, is inconsistent with both rights. It contemplates return of the unjustly taken enrichment to him from whom it was taken. It is that right the Administrator now seeks to assert. But he does so, I think, in the teeth of the statute. What he recovers is what the Act makes part of a sum it says shall be paid into the Treasury whenever recovered by the Administrator; or into the overcharged person's pocket when recovered by him. And these are mutually exclusive, not alternative, rights of recovery. If the Administrator pays over to the tenants what he recovers in this suit, he will be paying them money which the Act says shall go into the Treasury.[9] Their

[8] Under § 205(e) in the original Act, 56 Stat. 34, the Administrator was entitled to bring a suit for damages and penalties only when the buyer was not entitled to bring such an action. See, e.g., Bowles *v.* Glick Bros. Lumber Co., 146 F. 2d 566. The Act was subsequently amended to provide, as set out in the text, that the Administrator could bring a suit for damages and penalties also when the injured party had not brought such an action within thirty days from the date of the occurrence of the violation. 58 Stat. 640. See note 9. The suit at bar was brought before the passage of the amendment, but that fact is of no significance, since § 205 (e), whether taken in its original or amended form, is inconsistent with the remedy of restitution sought by the Government.

[9] Section 205(e): "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, *the person who buys* such commodity for use or consumption other than in the course of trade or business *may*, *within one year* from the date of the occurrence of the violation, except as hereinafter provided, *bring an action* against the seller *on account of the overcharge*. *In such action, the seller shall be liable for* reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) *Such amount not more than three times the amount of the overcharge or the overcharges*, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however*, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull [sic] nor the result of failure to take practicable precautions against the occurrence of the violation. *For the purposes of this section the payment or receipt of rent for defense area housing accommodations shall be deemed the buying or selling of a commodity*, as the case may be; *and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price*. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and *the buyer thereof fails to institute an action under this subsection within thirty days* from the date of the occurrence of the violation *or is not entitled* for any reason *to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period*. If such action is instituted by the Administrator, *the buyer shall, thereafter be barred from bringing an action*

time for suit has passed and with it their right to recover these amounts. Whether or not the Administrator can sue for these amounts, on behalf of the Government, foregoing the penalties, we are not asked to decide. But we are asked, in effect, to decide that he can take money the Act says shall go into the Treasury and give it to persons whose right to recover it the Act has cut off.

I think the remedy now sought is inconsistent with the remedies expressly given by the statute and contrary to the substantive rights it creates. I think too this is why Congress failed to provide for restitution, indeed cut off that remedy.

This does not imply any restriction upon the creative resources of a court of equity. When Congress is silent in formulating remedies for rights which it has created, courts of equity are free to use these creative resources. But where Congress is explicit in the remedies it affords, and especially where Congress after it has given limited remedies enlarges the scope of such remedies but particularizes them so far as remedies for overcharges are afforded, even courts of equity may not grant relief in disregard of the remedies specifically defined by Congress.

Mr. Justice REED and Mr. Justice FRANKFURTER join in this opinion.

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for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales to the same purchaser prior to the institution of the action in which such judgment was rendered." 50 U. S. C. § 925(e). (Emphasis added.)